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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 02/19/2004
COLEMAN SUDOL SAPONE
714 COLORADO AVENUE
BRIDGEPORT, CT 06605-1601

EXAMINER

LILLING, HERBERT J

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 02/19/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/647,882	10/04/2000	Timothy Lang	A20-015	5846

TITLE OF INVENTION: FOOD SUPPLEMENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$0	\$665	05/19/2004

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

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If the SMALL ENTITY is shown as NO:

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B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

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III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

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Complete and send this form, together with applicable fee(s), to: Mail

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7590 02/19/2004

**COLEMAN SUDOL SAPONE
714 COLORADO AVENUE
BRIDGEPORT, CT 06605-1601**

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I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

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nonprovisional	YES	\$665	\$0	\$665	05/19/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
LILLING, HERBERT J	1651	424-732000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1	_____
2	_____
3	_____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent); ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

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- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Director for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

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This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.**

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EXAMINER	
LILLING, HERBERT J	

ART UNIT	PAPER NUMBER
1651	

DATE MAILED: 02/19/2004

Determination of Patent Term Extension under 35 U.S.C. 154 (b) (application filed after June 7, 1995 but prior to May 29, 2000)

The Patent Term Extension is 0 day(s). Any patent to issue from the above-identified application will include an indication of the 0 day extension on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability

Application No.

09/647,882

Examiner

HERBERT J LILLING

Applicant(s)

LANG ET AL.

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to February 02, 2004.
2. ☒ The allowed claim(s) is/are 8-13, 16, 42-55.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


HERBERT J LILLING
Primary Examiner
Art Unit: 1651

EXAMINER'S AMENDMENT

An examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

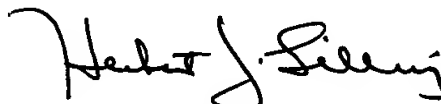
The Fax of February 02, 2004 has been entered and considered.

Claims 6 and 7 have been cancelled.

Approved by Attorney Coleman on February 17, 2004.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is (703) 308-2034** and **Fax Number** is for applications **Before Final** (703) 872-9306 and **After Final** for applications is 703-872-9307 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL
(703) 308-2034
Art Unit **1651**
February 17, 2004


Dr. Herbert J. Lilling
Primary Examiner
Group 1600 Art Unit 1651

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TELECOPY TRANSMITTAL SHEETNo. of Pages Transmitted: Cover + 8

Dated: February 2, 2004

To: Name: Examiner Herbert J. Lilling, Group Art Unit 1651Company or Firm: USPTOCity/State/Country: Alexandria, Virginia 22313Telecopier No.: 1-571-271(273) 0918From: H. D. ColemanAttorney's Docket No.: A20-015

Message: Dear Examiner Lilling:

Enclosed please find a response after final to the outstanding office action. We have reorganized the claims somewhat in light of what appears from the office action to be allowable subject matter. If you have any question, please call me at (203) 366-3560.

Very truly yours,

Henry D. Coleman

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is transmitted to the Patent and Trademark Office on the date shown below.


Henry D. ColemanFebruary 2, 2004

Date

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Lang, et al.
Serial No. : 09/647,882
Group Art Unit : ~~1761~~ 1651 *SW*
Filed : October 4, 2000
Examiner : Lilling, H.
For : Food Supplement

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

AMENDMENT/RESPONSE

Sir:

In response to the Office Action dated December 15, 2003, please consider the following amendment to the claims in the instant application. The amendments to the claims are presented below.

In the Claims:

Please amend the claims as follows:

1. Cancelled.
2. Cancelled.
3. Cancelled.
4. Previously cancelled.
5. Cancelled.

A20-015.afterfinalamendment
2/2/04

1

6. (Currently amended) A food additive, said food additive comprising fibre preparations from two or more types of fruit or vegetables, the fibre preparations having undergone an extraction to remove greater than 90% of water soluble solids therefrom the fibre preparations consisting of the unsolubilized residue of the extraction, according to claim 3 wherein the first of the two or more fruit and vegetables is a citrus fruit or carrot and the second of the two or more fruit or vegetables is selected from the group consisting of grape, apple and cranberry.

7. (Currently amended) A food additive, said food additive comprising fibre preparations from two or more types of fruit or vegetables, the fibre preparations having undergone an extraction to remove greater than 90% of water soluble solids therefrom the fibre preparations consisting of the unsolubilized residue of the extraction, according to claim 6 wherein the first of the two or more types of fruit or vegetables is selected from the group consisting of orange, carrot and grapefruit and the second of the two or more types of fruit or vegetables is selected from the group consisting of grape, apple and cranberry.

¹
8. (Currently amended) A food additive, said food additive comprising fibre preparations from two or more types of fruit or vegetables, the fibre preparations having undergone an extraction to remove greater than 90% of water soluble solids therefrom the fibre preparations consisting of the unsolubilized residue of the extraction, according to claim 1 or 4 wherein a first of the two or more fruits or vegetables has a calcium content of between 4000 and 15000 ppm and a second of the two or more fruit or vegetables has a calcium content of between 200 and 1500 ppm.

²
9. (Currently amended) A food additive, said food additive comprising fibre preparations from two or more types of fruit or vegetables, the fibre preparations having undergone an extraction to remove greater than 90% of water soluble solids therefrom the fibre preparations consisting of the unsolubilized residue of the extraction, according to claim 1 or 4 wherein a first of the two or more fruits or vegetables has a soluble neutral non starch polysaccharide content of between 2 and 3 percent dry weight and a second of the two or more fruit or vegetables has a soluble neutral non starch polysaccharides content of between 1 and 2 percent dry weight.

³
10. (Currently amended) A food additive, said food additive comprising fibre preparations from two or more types of fruit or vegetables, the fibre preparations having undergone an extraction to remove greater than 90% of water soluble solids therefrom the fibre preparations consisting of the unsolubilized residue of the extraction, according to claim 1 or 4 wherein a first of the two or more fruits or vegetables has a total uronic acids content of between 20 and 40 percent dry weight and a second of the two or more fruit or vegetables has a total uronic acids content of between 5 and 20 percent dry weight.

⁴
11. (Currently Amended) A food additive, said food additive comprising fibre preparations from two or more types of fruit or vegetables, the fibre preparations having undergone an extraction to remove greater than 90% of water soluble solids therefrom the fibre preparations consisting of the unsolubilized residue of the extraction, ~~according to claim 1 or 4~~ wherein

the first of the two or more fruits or vegetables has :

a calcium content of between 4000 and 15000 ppm;

a soluble neutral non starch polysaccharides content of between 2 and 3 percent dry weight; and

a total uronic acids content of between 20 and 40 percent dry weight

and the second of the two or more fruit or vegetables has :

a calcium content of between 200 and 1500 ppm;

a soluble neutral non starch polysaccharides content of between 1 and 2 percent dry weight; and

a total uronic acids content of between 5 and 20 percent dry weight.

⁵
12. (Previously amended) A food additive according to claim ⁴11 wherein the first of the two or more fruit and vegetables is an orange, and the second of the two or more fruit or vegetables is selected from the group consisting of apple, grape and cranberry.

⁶
~~13~~. (Previously amended) A food additive according to claim ⁵~~12~~ wherein the first of the two or more fruit and vegetables is an orange and the second of the two or more fruit or vegetables is an apple.

14-15. Previously cancelled

⁷
~~16~~. (Previously amended) A food additive according to claim ⁴~~11~~ wherein the first of the two or more fruit and vegetables is a grapefruit, and the second of the two or more fruit or vegetables is selected from the group consisting of apple, grape and cranberry.

17-39. Previously cancelled

40. Cancelled

41. Cancelled

⁸
~~42~~. (Previously amended) A food additive comprising a mixture of a first fiber preparation from a first fruit or vegetable, and a second fiber preparation from a second fruit or vegetable, the first fiber preparation and the second fiber preparation are prepared by
slicing the two or more fruits or vegetables into substantially uniform pieces,
extracting soluble solid by contacting the pieces with an extraction liquid under conditions to remove a majority of water soluble solids, and
substantially removing any remaining seed tissue from the fibre
the first fruit or vegetable being one or more selected from the group consisting of citrus tomato, carrot, mango, papaya, banana, pineapple, kiwi fruit, spinach, and
the second fruit or vegetable being one or more selected from the group consisting of melon, grape, apple and cranberry.

⁹
~~43~~. (Previously added) The food additive of claim ⁸~~42~~ wherein the enzymes within the fruit or vegetable are inactivated before extraction.

¹⁰
44. (Currently amended) The food additive of claim ~~43~~⁹ 44 wherein the inactivation is by heat

¹¹
45. (Previously added) The food additive of claim ~~42~~⁸ wherein the sliced fruit is flash heated at about 60°C

¹²
46. (Previously added) The food additive of claim ~~42~~⁸ wherein the sliced fruit of vegetable is undigested prior to extraction, having not been physically comminuted or treated enzymically or chemically to alter insoluble solids within the fruit or vegetable

¹³
47. (Previously added) The food additive of claim ~~46~~¹² wherein the sliced fruit has not been macerated or milled.

¹⁴
48. (Previously added) The food additive of claim ~~46~~¹² wherein the sliced fruit has not been treated by alkali or acid.

¹⁵
49. (Previously added) The food additive of claim ~~46~~¹² wherein the slicing disrupts only about 0.5% of the cell walls.

¹⁶
50. (Previously added) The food additive of claim ~~42~~¹² wherein the pieces of fruit is sliced so that the soluble solids have a diffusion path to the extraction liquid of not longer than about 1.5 mm

¹⁷
51. (Previously added) The food additive of claim ~~42~~¹² wherein the extraction liquid is water.

¹⁸
52. (Previously added) The food additive of claim ~~51~~¹⁷ wherein the extraction is by a countercurrent method, wherein the sliced fruit or vegetable material is carried in one direction whereas the extraction liquid is carried in the opposite direction.

¹⁹
~~53~~. (Previously added) The food additive of claim ¹⁸~~52~~ wherein greater than 90% of the water soluble solids are removed.

²⁰
~~54~~. (Previously added) The food additive of claim ¹⁸~~52~~ wherein between about 93% to about 99% of the soluble solids are removed.

²¹
~~55~~. (Previously added) The food additive of claim ⁸~~42~~ wherein the first fruit or vegetable being one or more selected from the group consisting of citrus and carrot, and the second fruit or vegetable being one or more selected from the group consisting of grape, apple and cranberry.

REMARKS

After entering the instant amendment, claims 6-13, 16 and 40-55 are pending in the present application, claims 1-3 and 5 being cancelled pursuant to this amendment. Claims 42-55 were previously added and are allowed. In order to address the allowability of all of the claims of the present application, Applicants have cancelled claims 1-3 and 5 and incorporated the limitations/restrictions of claims 6 through 13 and 16 into claim 1. For purposes of organization and to capture the subject matter already pending, claims 6-11 have been presented as independent claims. Applicants believe that the present amendment now obviates the Examiner's rejection of the instant application under 35 U.S.C. §112, first paragraph and that the present application is in condition for allowance. Support for the amendment to the claims can be found throughout the original specification, including the examples and the claims and in particular, claims 6-13 and 16. No new matter has been added by way of the present amendment.

The Examiner has rejected claims 1-3, 5-7, and 40-41 under 35 U.S.C. §112, first and second paragraphs for the reasons which are stated in the office action in paragraphs 4 and 5 on pages 2-3. The Examiner essentially argues that the previously submitted claims which

referenced "preparations" were non-enabled and therefore invalid based upon the failure of the claims to provide some context or limitations for the preparations.

In order to address the Examiner's rejections, Applicants have amended the claims by incorporating the subject matter of dependent claims 6-13 and 16 into the subject matter of claim 1. The resulting amended claims 6-11, now reflect a term for preparations which is clearly enabled and reflects an extraction of 90% of the water soluble solids therefrom. It is respectfully submitted that the claims now enable one of ordinary skill in the art to make and use the invention, which has limitations in the claims which support their enablement.

Turning to the Examiner's §112, second paragraph rejection, the Examiner rejected the previously filed claims as being indefinite, inasmuch as the term "preparations" was considered indefinite. In order to obviate this rejection, Applicants have inserted limitations within the amended claims which now fully address the Examiner's concerns that certain of the previously filed claims were vague and indefinite. It is respectfully submitted that Applicant's amendment has obviated the Examiner's rejection under §112, second paragraph.

For the above reasons, it is respectfully submitted that the present application is now in condition for allowance and such action is earnestly solicited. No claim has been added, one independent claim and three dependent claims have been cancelled. Six dependent claims have been amended to be independent claims. A fee in the amount of \$129.00 (for three additional independent claims which are unaccounted for in the original filing fee and previously filed amendments which cancelled two additional independent claims 25 and 34) is therefore due for the presentation of this amendment. The Commissioner is authorized to charge any such fee or credit any overpayment to deposit account 04-0838.

An indication of any charge or credit made to the authorized Deposit Account is respectfully requested at the time of the issuance of a further office action, so that the charge may be accurately tracked.

Dated: 2/2/04Respectfully submitted,
Coleman Sudol Sapone, P.C.By: 

Henry D. Coleman

Reg. No. 32,559

714 Colorado Avenue

Bridgeport, Connecticut 06605-1601

(203) 366-3560

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being sent by facsimile to Examiner Lilling in Group Art Unit 1651 of the United States Patent and Trademark Office on February 2, 2004.


Henry D. Coleman (Reg. No. 32,559)